

Implementation Deed

Wool Test Marketing Levy

Federation of Australian Wool Organisations (**FAWO**)

National Council of Wool Selling Brokers of Australia Ltd
(**NCWSBA**)

Private Treaty Wool Merchants of Australia Inc (**PTWMA**)

MinterEllison

L A W Y E R S

RIALTO TOWERS, 525 COLLINS STREET, MELBOURNE VIC 3000, DX 204 MELBOURNE
TEL: +61 3 8608 2000 FAX: +61 3 8608 1000
www.minterellison.com

Details

Date 2005

Parties

Name Federation of Australian Wool Organisations (an unincorporated association)
ABN 38 979 046 569
Short form name FAWO
Notice details 691 Geelong Rd, Brooklyn, Victoria 3012
 Facsimile 03 9318 0077
 Attention

Name National Council of Wool Selling Brokers of Australia Ltd
ABN 40 059 628 554
Short form name NCWSBA
Notice details 691 Geelong Rd, Brooklyn, Victoria 3012
 Facsimile 03 9318 0077
 Attention

Name Private Treaty Wool Merchants of Australia Inc
ABN 44 672 992 152
Short form name PTWMA
Notice details 691 Geelong Rd, Brooklyn, Victoria 3012
 Facsimile 03 9318 0077
 Attention:

Background

- A The Australian wool industry has recognised a need to raise funds for the promotion of the wool industry in order to protect and improve its economic viability, both domestically and internationally.
- B The International Wool Textile Organisation has sought funding to initiate a test marketing campaign with the aims of increasing demand for wool in the test market and assessing the effectiveness of the campaign.
- C The Australian wool industry supports, and wishes to contribute funds to, the campaign. At the Annual General Meeting of the FAWO held on 19 August 2005 it was resolved, subject to legal advice, to implement a transaction based contribution to be imposed on all wool sold at auction or by private treaty with the objective of raising US\$2,800,000.00 to contribute to the campaign. It was further resolved that the FAWO Executive Committee be authorised to develop the necessary procedures to facilitate the collection and remittance of this contribution. The amount of the levy is proposed to be A\$1.50 per bale to be added to the post-sale service charge typically paid to selling agents by buyers at the point of sale. Selling agents will collect and remit the levy to a special purpose bank account established by the FAWO with such funds to be applied for the purposes of the campaign. The procedures will be subject to audit by FAWO.

- D The parties to this deed (including selling agents who become parties to this deed by signing a deed of accession) have agreed, subject to the conditions precedent set out in this deed being satisfied, to implement the test marketing levy on the terms and conditions set out in this deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this deed:

ACCC means the Australian Competition and Consumer Commission.

Business Day means a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia.

Buyer means a buyer of wool at auction or by private treaty.

Conditions Precedent means the conditions precedent set out in clauses 2.2 and 2.3.

Consent means the consent by a member of PTWMA or NCWSBA or any other selling agent to be bound by the terms and conditions of this deed to the extent that it applies to them by way of return of an executed Deed of Accession to PTWMA, NCWSBA or FAWO, as the case may be.

Deed of Accession means the deed poll of accession, in the form attached at Annexure 1.

End Date is defined in clause 2.1.

Funds means the funds raised through imposition of the Test Marketing Levy.

IWTO means the International Wool Textile Organisation.

Levy Period means the period of time in which the Test Marketing Levy will be imposed, commencing on the date on which both Conditions Precedent in clause 2 are satisfied and continuing until FAWO gives notice to all other Parties that the Target Amount has been raised.

Party and Parties means FAWO, PTWMA, NCWSBA and each Selling Agent.

Post-Sale Service Charge means the post-sale charge typically paid to a Selling Agent by a Buyer at the point of sale (which, for the avoidance of doubt, will continue to be individually negotiated between each Selling Agent and each Buyer in all cases).

Selling Agent means a wool broker, private treaty merchant or other selling agent who has provided Consent, pursuant to an executed Deed of Accession, to be bound by the terms and conditions of this deed.

Target Amount means an amount of US\$2,800,000.00 or such other revised amount as resolved by FAWO and notified to the Parties in accordance with clauses 5(g) and 5(h).

Test Marketing Campaign means the IWTO test marketing campaign.

Test Marketing Levy means the transaction based contribution of A\$1.50 per bale imposed on all wool sold.

Test Marketing Levy Fund means a special purpose bank account established by FAWO for collection and management of Funds, and any other funds received for the purposes of the Test Marketing Campaign.

TPA means the *Trade Practices Act 1974 (Cth)*.

1.2 Interpretation

In this deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this deed, and a reference to this deed includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **US\$, \$US, dollar** or **\$** is to the currency of the United States and a reference to **A\$** is to Australian currency;
- (f) a reference to time is to Victoria, Australia time;
- (g) a reference to a party is to a party to this deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (l) any deed, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this deed or any part of it.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Conditions Precedent

2.1 Conditions Precedent

Save for this clause 2 and clauses 3, 5(a), 5(b) and 5(c), this deed will not come into effect until the Conditions Precedent in this clause 2 are satisfied. If these Conditions Precedent are not satisfied by 30 June 2006 (**End Date**), all obligations of the Parties will terminate as from that End Date.

2.2 ACCC Authorisation

It is a condition precedent that FAWO receives notice that this deed between the Parties to implement the Test Marketing Levy has received interim or final authorisation from the ACCC pursuant to sub-section 88(1) of the TPA.

2.3 Consent from Selling Agents

It is a condition precedent that PTWMA and NCWSBA have received at least 75% of Consents by number of members of their respective associations.

2.4 Satisfaction of Conditions Precedent

- (a) FAWO must use its best endeavours to ensure that the Condition Precedent in clause 2.2 is satisfied.
- (b) PTWMA and NCWSBA must each use their best endeavours to ensure that the Condition Precedent in clause 2.3 is satisfied.

2.5 Consultation on failure of Conditions Precedent

If any Condition Precedent is not satisfied or there is an occurrence that will prevent any such Condition Precedent being satisfied by the End Date (other than as a result of a breach by any Party of its obligations under this deed), the Parties agree to consult in good faith with a view to determining whether the Test Marketing Campaign may proceed by way of alternative means or methods.

3. Obligations of PTWMA and NCWSBA

PTWMA and NCWSBA each authorise FAWO to apply on their behalf for interim and final authorisation from the ACCC pursuant to sub-section 88(1) of the TPA, to implement the Test Marketing Levy in accordance with this deed and further undertake:

- (a) to use their best endeavours to obtain Consents from their respective members;
- (b) to promptly notify FAWO, in writing, when such Consents are obtained and from which members;
- (c) to provide FAWO with copies of all Deeds of Accession executed by their respective members; and
- (d) to otherwise use their best endeavours to assist the other Parties to implement the Test Marketing Levy, including complying with conditions of authorisation (if any) that may be imposed by the ACCC.

4. Obligations of Selling Agents

Each Selling Agent undertakes:

- (a) as soon as practicable after being notified by FAWO that all Conditions Precedent have been satisfied, to impose and collect a contribution representing the Test Marketing Levy on all wool sold by the Selling Agent during the Levy Period by adding the relevant amount of the Test Marketing Levy to the Post-Sale Service Charge;
- (b) to remit all Funds collected through the imposition of the Test Marketing Levy to a bank account nominated by FAWO, established for the purpose of collecting the Funds;
- (c) to keep up to date and accurate records of all Funds collected and remitted to FAWO;
- (d) if requested by FAWO, to permit those records to be audited by FAWO or an auditor nominated by FAWO; and
- (e) to otherwise use their best endeavours to assist the other Parties to implement the Test Marketing Levy, including complying with conditions of authorisation (if any) that may be imposed by the ACCC.

5. Obligations of FAWO

FAWO undertakes:

- (a) to use its best endeavours to apply for, and obtain, on its behalf and on behalf of the other parties to the Implementation Deed, interim and final authorisation from the ACCC pursuant to sub-section 88(1) of the TPA to implement the Test Marketing Levy in accordance with this deed;
- (b) to comply with any conditions of interim or final authorisation that may be imposed by the ACCC (to the extent relevant to FAWO);
- (c) as soon as practicable after the date of this deed, to establish a Test Marketing Levy Fund and to promptly notify each Selling Agent of the relevant details of that Test Marketing Levy Fund;
- (d) to accept the Funds remitted by the Selling Agents in accordance with clauses 4(b) and 6.2(b);
- (e) to independently and appropriately administer the Funds to ensure that the individual transactions between Selling Agents and Buyers on which the Test Marketing Levy is imposed are to be kept confidential and not disclosed to any other Selling Agent or Buyer, other than in an aggregated form that does not disclose the individual identity or volume of trade of any individual entity;
- (f) subject to any condition of interim or final authorisation (if any) imposed by the ACCC, to apply the Funds towards the Test Marketing Campaign (including legal, administrative and other costs associated with collecting and administering such Funds) or, if those Funds are not required for the Test Marketing Campaign (in part or in whole) for any reason, in its discretion towards any similar marketing campaign or otherwise for the benefit of the Australian wool industry;
- (g) if it considers that it is necessary or desirable to do so, to revise the Target Amount in order to cover:
 - (i) a shortfall in funding from other IWTO member nations; and/or
 - (ii) an overrun in the costs of the Test Marketing Campaign;
- (h) to give notice to all other Parties if the Target Amount is revised in accordance with clause 5(g);
- (i) to give notice to all other Parties once the Target Amount has been raised and that the Levy Period has therefore ended; and
- (j) to otherwise use its best endeavours to assist the other Parties to implement the Test Marketing Levy.

6. Term and Termination

6.1 Term

This deed (other than clause 2 and clauses 3, 5(a), 5(b) and 5(c) (which commence on the date this deed is first executed by a Party)) commences on the date on which all Conditions Precedent are satisfied and will continue until the date on which one of the following events occurs:

- (a) if interim authorisation is revoked or expires without final authorisation for the same conduct then being in force; or

- (b) when FAWO gives notice to all other Parties that the Target Amount has been raised and that the Levy Period is at an end.

6.2 Effect of Termination

If this deed is terminated or otherwise ends pursuant to clauses 6.1:

- (a) each Selling Agent agrees to immediately stop imposing and collecting the Test Marketing Levy;
- (b) FAWO agrees to accept all remaining funds remitted by the Selling Agents, apply such funds towards the Test Marketing Campaign or otherwise in accordance with clause 5(f), and thereafter close the special purpose bank account established for the collection and management of Funds; and
- (c) each Party will otherwise be released from its obligations under this deed.

7. Miscellaneous

7.1 Alterations

This deed may be altered only in writing signed by each party.

7.2 Approvals and consents

Except where this deed expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this deed.

7.3 Assignment

A party may only assign this deed or a right under this deed with the prior written consent of each other party.

7.4 Counterparts

This deed may be executed in counterparts. All executed counterparts constitute one document.

7.5 No merger

The rights and obligations of the parties under this deed do not merge on completion of any transaction contemplated by this deed.

7.6 Entire agreement

This deed constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous deeds, agreements or understandings between the parties in connection with its subject matter.

7.7 Further action

Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this deed and any transaction contemplated by it.

7.8 Severability

A term or part of a term of this deed that is illegal or unenforceable may be severed from this deed and the remaining terms or parts of the terms of this deed continue in force.

7.9 Waiver

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

7.10 Relationship

Except where this deed expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.

7.11 Governing law and jurisdiction

This deed is governed by the law of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

Signing page

EXECUTED as a deed.

Signed for and on behalf of the **Federation of Australian Wool Organisations** by its authorised representative in the presence of

Signature of witness



Name of signatory



Name of witness (print)

The common seal of National Council of Wool Selling Brokers of Australia is fixed to this document in accordance with its constitution in the presence of

Signature of member



Signature of member/public officer
(Please delete as applicable)



Name of member (print)

Name of member/public officer (print)

The common seal of Private Treaty Wool Merchants of Australia Inc is fixed to this document in accordance with its constitution in the presence of

Signature of member



Signature of member/public officer
(Please delete as applicable)



Name of member (print)

Name of member/public officer (print)

Annexure 1 - Deed of Accession

Deed poll of accession

Date 2005
By Party named in the Schedule (**Acceding Party**)

Background

This deed poll is supplemental to the Implementation Deed dated _____ between the National Council of Wool Selling Brokers of Australia Ltd, the Private Treaty Wool Merchants of Australia Inc, the Federation of Australian Wool Organisations and others (**Implementation Deed**).

Terms

1. The Acceding Party confirms that it has been supplied with a copy of the Implementation Deed.
2. Capitalised terms in this Deed Poll have the same meaning as capitalised terms in the Implementation Deed.
3. The Acceding Party undertakes to all present and future parties to the Implementation Deed (whether original or by accession) to observe, perform and be bound by all the terms of the Implementation Deed that impose obligations on a Selling Agent to the intent and effect the Acceding Party will be deemed from the date of this deed poll to be a party to the Implementation Deed.
4. The Acceding Party's address for the purposes of the Implementation Deed is as listed in the Schedule.
5. Clause 7 of the Implementation Deed applies to this deed poll as if it were a term of this deed poll.

EXECUTED as a deed.

Signed for the Acceding Party by

Signature of director

Name of director (print)



Signature of director/company secretary
(Please delete as applicable)

Name of director/company secretary (print)



Schedule to Deed of Accession

Name of Acceding Party	ABN	Notice Details